(15C)

A.P.R.

HIGH COURT OF JUDICATURE, CHHATTISG

Writ Petition No.2262 of 2003

PETITIONER: Jitendra Kumar Gupta,
S/o Shri Lalita Prasad Gupta,
Aged about 31 years,
R/o Tilda, Bilaspur (C.G.)

Versus

RESPONDENTS:

1. State of Chhattisgarh,
Through the Secretary,
Department of Excise, D.K.S.
Bhawan,
Raipur (C.G.)

2. The Commissioner (Excise),
Raipur (C.G.)

3. The Collector, Raipur (C.G.)

4. The District Excise Officer,
Raipur (C.G.)

5. The Excise Sub-Inspector,
Circle No.2, Raipur (C.G.)

POST FOR ORDER ON 19th August, 2003

Sd/-
L.C.BHADOO
Judge

18th August, 2003

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Circle No.2, Raipur (C.G.)

Present:-

Shri Kanak Tiwari, Shri V.C. Ottalwar
and Shri Rajeev Shrivastava, Advocates: For the petitioner

Dr. N.K. Shukla, Additional Advocate General: For the State/respondents

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Before: Hon'ble Shri L.C. Bhadoo, J.

O R D E R

(Passed on 19th August, 2003)

1. The petitioner, who is a liquor contractor, by this petition under Article 226/227 of the Constitution of India, has questioned the order of the Collector, Raipur (licensing authority), passed on 30.07.2003 cancelling the licence of Mana Group of country/foreign liquor shops for the excise year 2003-2004. One of the shops of the petitioner is situated at Urla (Abhanpur).

2. The petitioner's petition is that he was granted licence for the period from 01.04.2003 to 31.03.2004 in the name of Mana Group of Country/ Foreign Liquor Shops. One of the shops of Mana Group is situated at Urla (Abhanpur). On 06.07.2003, the Excise Sub-Inspector conducted inspection of the petitioner's shop at 11.40 a.m. At that time, the petitioner was not present in the shop and the Inspector obtained the signature of one Radheyshyam Barik who was present in the shop in the capacity of petitioner's authorized agent. The petitioner's servants and authorized agents were turned out of the shop and entire inspection was conducted in the back of the petitioner and his servants. The signature of the authorized agent of the petitioner namely, Radheyshyam Barik was obtained by respondent No.5.

3. It has been further mentioned that show cause notice was sent by the Collector, Raipur, on 09.07.2003 based on the alleged inspection report submitted by respondent No.5 alleging that accounts were not kept properly, inspection book was not produced and from the box of Royal Master unused holograms for the year 2002-2003 bearing Nos.016200001 to 016200101 (total 101) were found. The said show caused notice for cancelling of licence was issued under Section 31 of the Chhattisgarh Excise Act, 1915 (hereinafter referred to as 'the Act'), a copy of which is Annexure P-1. After completion of the inspection, copy of the inspection report and supporting documents were not supplied to the petitioner. Therefore, before giving reply to the show cause notice, the petitioner demanded the copies of the documents vide his letter dated 11.07.2003 (Annexure P-2) and the copies of the same (Annexures P-3 to P-6) were delivered by the respondents. The endorsement of Radheyshyam Barik was obtained by coercive method. There was interpolation on the word 'seal' in the charge sheet and seizure Panchanama, and the construction of sentence also shows that the authority has made certain manipulations while preparing the charge sheet and Panchanama. On 15th July, 2003, reply

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was submitted by the petitioner to the Collector, Raipur, in which all the objections were raised. In spite of the fact that the trial of the offence does not fall within the jurisdiction of the Collector, even then instead of dropping the proceedings initiated by the Collector under Section 31 of the Act, the Collector proceeded with the matter. The act of respondent No.3 was with mala fide intention against the petitioner and only motive of respondent No.3 was to cancel the licence of the petitioner's shop. Apprehending the attitude of respondent No.3, the petitioner submitted a representation to the Commissioner (Excise), Raipur, but the Commissioner also not exercised his power. The copy of representation dated 25.07.2003 submitted by the petitioner to the Commissioner is Annexure P-8. The action of respondent No.3 issuing show cause notice to the petitioner under Section 31 of the Act on the basis of the charge sheet dated 06.07.2003 is arbitrary, illegal and contrary to the law applicable to the facts and circumstances of the case. The perusal of the documents reveals that entire report is a concocted one and the consent of the petitioner's authorized agent with regard to the departmental decision has been obtained by coercion. Respondent No.3 failed to see that the holograms are kept in the custody of the Commissioner (Excise) and if unused holograms have been found in any other place, then it becomes a criminal offence which can be tried by a competent Court. So far as charge regarding non-production of inspection book and non-maintenance of proper account books is concerned, it is not covered under Section 31 of the Act, but the same is covered under Section 39 of the Act of which the liability of the licence has been prescribed under Section 44 of the Act. Therefore, it is prayed that the Court may call for the entire record and quash the show cause notice dated 09.07.2003. The Court may be pleased to quash the order dated 30th July, 2003 and quash the memorandum dated 31.07.2003, issued by the Collector, Raipur, putting the petitioner's shop into auction.

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4. Return has been filed on behalf of the State/respondents in which it has been mentioned that on 06.07.2003, the Excise Sub-Inspector, Circle No.2, Raipur, inspected the shop of the petitioner and submitted an inspection report. It has been mentioned in the inspection report that the petitioner has not maintained the correct accounts of the foreign liquor, brand-wise. The Sub-Inspector has also seized the holograms as mentioned in the petition. The holograms are fixed on the bottles of the foreign liquor to ensure that the liquor containing in the bottle is already excise duty paid as well as to also ensure that the liquor in the bottle came from lawful sources. The hologram is a 'Security Document' which is being supplied only to the manufacturers of foreign liquor and they are required to be kept under the strict security and affixed by maintaining a proper account by the manufacturer concerned. It is not supposed that the hologram may be found in the possession of the petitioner, because it is a security document and being supplied only to the manufacturers. Finding of the hologram in the possession of the petitioner shows that he is involved in the illegal trafficking in foreign liquors. The petitioner was entitled to make an appeal before the Excise Commissioner, but he has not filed any appeal before the Excise Commissioner and rushed to this Court directly, which is pre-mature. Therefore, the writ petition be dismissed.

5. I have heard learned counsel for the petitioner and learned Additional Advocate General for the State/respondents.

6. The main argument of the learned counsel for the petitioner is that no prescribed format was provided by the Excise Department, so that the petitioner should maintain daily accounts as envisaged in Rule 20 of 'Chhattisgarh Excise Settlement of Licences for Retail Sale of Country/Foreign Liquor Rules, 2002' (hereinafter referred to as 'the general licence conditions'). As far as non-providing of inspection book, the agent and the employees of the petitioner were ousted from the

shop, hence there was no occasion for them to provide the inspection note book. On the contrary, whole record was taken by the inspecting team. The learned counsel further submitted that the bare perusal of the Panchanama, the inspection note, memorandum of charges (Annexure P-3), seizure Panchanama (Annexure P-4) and Panchanama (Annexure P-5) shows that there are interpolations in these documents, in which the word 'seal' was written before the word 'box' and later on this word was interpolated in order to show this word as deleted. This act of the inspection team and the inspector itself shows that these interpolations were made later on and the copies of these documents were not supplied on the spot to the agent of the petitioner. When the holograms were found in the sealed box which were received by the petitioner from the company, then how the petitioner can be held responsible. He further submitted that the learned licencing authority (the Collector) has not given his findings on these points.

7. On the other hand, the learned Additional Advocate General appearing on behalf of the State/respondents supported the impugned order of the Collector and argued that correct procedure has been followed by the Collector before cancelling the licence. He submitted that in the writ jurisdiction this Court cannot sit as a Court of appeal to scrutinize and examine the finding of the Collector.

8. After hearing the arguments of both the parties, I have perused the relevant documents as also the impugned order dated 30th July, 2003, cancelling the licence of the petitioner.

9. The perusal of the show cause notice and the charge memorandum (Annexure P-3) shows that at the time of inspection of the foreign liquor shop it was found that private account book (एक जाई) was found; brand-wise accounts of foreign liquor had not been maintained and the inspection book was not provided. Therefore, this violates Rules 20 & 22 of general licence conditions. At the time of inspection, 101 unused

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holograms from the carton of Royal Master were found which is violative of Rules 14 and 23 (1) (a) of general licence conditions. The learned Collector after issuing the show cause notice, providing copies of the documents to the petitioner and after hearing the learned counsel for the petitioner passed the impugned order.

10. If we look into the explanation submitted by the petitioner, in response to the show cause notice regarding the violation of rule 20 of the general licence conditions, reply has been submitted on behalf of the petitioner that the accounts were maintained as per the directions given by the Department to the licensee and the account book which has been seized is the account book of the shop. It is incorrect to say that it is a private account book. As far as the question of maintaining the accounts book, brand-wise, the accounts book has been maintained according to the directions given by the Department and according to the Act and the general licence conditions. The Department had never directed the petitioner to maintain the accounts book brand-wise/ label-wise. If any such directions are issued by the Department, then a copy of the same be provided to the petitioner in order to maintain such accounts in future and to avoid irregularities. As such the petitioner has not violated the conditions of Rule 9 of the general licence conditions.

11. In para-9 of the explanation given by the petitioner, it has been stated that the inspection team took the inspection book, accounts book and other papers into their possession, the servants of the petitioner were sent out of the shop, and they took whole control of the shop. Therefore, it is incorrect to say that the inspection book was not handed over to them. Therefore, the petitioner has not violated Rules 20, 22 & 32 of the general licence conditions. In para-15 of the explanation, it has been specifically mentioned that papers regarding the holograms, they have been falsely prepared and the word 'seal' has been interpolated which itself shows that it has been done with mala

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fide intention. Moreover, these holograms are supposed to remain with the distillers and the same are provided by the Excise Department to the distillery. An enquiry should have been instituted as to how these holograms were found in the shop. Moreover, these holograms were found in the sealed box and if these holograms were put in the sealed box by the distillery before delivery to the petitioner, then the petitioner is not responsible for that.

12. A perusal of the impugned order shows that the learned Collector has simply referred to rules at page 4 of the order. It has been mentioned in the impugned order at para-7 that Rule 6 of the general licence conditions prescribed that regular and correct account shall be maintained and Rule 17 prescribed that the rate list shall be shown in the shop. Therefore, it is necessary that brand-wise, label-wise account book should be maintained, and the contention of the petitioner is without force. But, the learned Collector has not observed anything on the allegations of the petitioner that no special instructions, directions or circulars were ever issued with regard to maintenance of separate accounts brand-wise/label-wise and if such circulars have been issued, the same should be brought to the notice of the petitioner, so that in future, he should maintain accounts book in the prescribed proforma. Similarly, about the holograms, the Collector has not given his finding with regard to interpolations, on the word 'seal', as to how this has happened and occurred. It creates a little doubt because the seizure Panchanama (Annexure P-4) was prepared at 11.40 a.m. on 06.07.2003 and in this document the word 'seal' before the word 'box' has been interpolated, whereas, Panchanama (Annexure P-5) was prepared at 5 p.m. on 06.07.2003 i.e. after five hours and 20 minutes and in this document also the word 'seal' has been interpolated. Similarly, charge sheet (Annexure P-3) was issued on 07.07.2003 and in this document also the word 'seal' has been overwritten. This shows that in all the three documents (Annexures P-3 to P-5), interpolations

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were made at one time i.e. after preparation of all the three documents on 06.07.2003 and 07.07.2003. The allegation of the petitioner that the copies of these documents were not delivered to him at the time of the inspection itself shows that these interpolations had been made on the back of the agent of the petitioner namely, Radheyshyam Barik. It is clear from the order of the Collector that copies of these documents were made available to the petitioner on being asked by him after appearing before the Collector and no finding has been recorded by the Collector on this account as to when and how these interpolations were done. Similarly, the petitioner has specifically in his explanation stated that his employees were sent out of the shop, therefore, there was no question of giving the inspection book to the inspecting team.

13. Therefore, looking to the above irregularities happened in the process of inspection of the shop of the petitioner, the learned Collector should have after enquiring from the Excise Department by giving them opportunity to explain about the points which were raised by the petitioner, he ought to have recorded his finding after giving the opportunity to both the parties, which has not been done. Even though, a perusal of the order sheets shows that opportunity was given to the petitioner's counsel that if he wants he can call the witness and cross examine, but the same was not availed of by the petitioner, but the principle of natural justice and the propriety demands that the Collector should have passed the order on the points raised by the petitioner. Since the Collector has not recorded the finding on these points, I am of the opinion that the impugned order deserves to be set aside only on this ground. As far as violation of Rule 23 (1) (a) of the general licence conditions that the rate list was not shown in the shop is concerned, since it has not mentioned in the charge sheet, this cannot be made a ground.

14. Now coming to the question that alternative remedy was available to the petitioner and he should have exhausted that remedy first before

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filing this writ petition, as has been observed by the Division Bench of the Madhya Pradesh High Court, in para-9, in the case of **Sukhlal Sen vs. Collector, Distt. Satna and others** reported in **AIR 1969 Madhya Pradesh 176**,

> "It is no doubt true that the High Court may refuse to exercise its jurisdiction under Article 226, if the petitioner did not avail of alternative remedies, but the rule requiring the exhaustion of alternative remedies before the writ will be issued is not a rule of law but is a rule of policy, convenience and discretion. The High Court will readily issue a writ of certiorari in a case where there has been a denial of natural justice."

This was laid down after relying upon the decision of the Hon'ble Supreme Court in the case of **State of U.P. vs. Mohd. Nooh** reported in **AIR 1958 SC 86**. In the case of **Sukhlal Sen *(supra)*** the Court further held that

> "The Collector in cancelling the petitioner's licence, did not follow the requirements of natural justice. This defect is fundamental and it would not be a sound exercise of discretion to refuse to interfere simply on the ground that the petitioner could have gone up in appeal."

15. Similarly, the Hon'ble Apex Court in the case of Union of India and another vs. State of Haryana and another reported in (2000) 10 SCC 482 held that

> "Alternative remedy --- when not an adequate remedy --- Importance of question raised --- Question of law raised --- Union of India in discharge of their statutory functions under Telegraph Act providing telephone connections to subscribers --- Respondent State by amending their respective sales tax statutes as a result of which respective assessing authorities under those amended laws assessing sales tax on the rentals being charged for supply of telephones --- Union of India filing writ petitions in respective High Courts challenging the levy --- Held, High Courts were not justified in doing so --- Question raised was legal which required determination of whether provision of telephone connections and instrument amounted to sale and even so why was Union of India not exempt from payment of sales tax under the respective statutes ---

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> Question was of fundamental character which should have been dealt with by the High Courts instead of leaving the matter to statutory appeal."

16. Similarly, the Hon'ble Apex court in the case of **J.M. Baxi & Co., Gujarat vs. Commissioner of Customs, New Kandla and another** reported in **(2001) 9 SCC 275** has held that

> "Alternative remedy/exhaustion of remedies --- Incapability of rule of alternative remedy --- Where recourse to alternative remedy was onerous involving deposit of huge amount (Rs.46 lakhs) and demand itself was barred by limitation, held, interference by High Court on merits was necessary despite alternative remedy being available."

17. In view of the above law laid down by the Hon'ble Apex Court, if we look into the allegations in the present case and the allegations of bias which have been levelled by the petitioner, I am of the opinion that it is a fit case in which this Court should exercise its jurisdiction under Article 226 of the Constitution of India instead of leaving the petitioner at the mercy of the appellate authority.

18. The other point which has been raised by the petitioner is that inspection of one shop was conducted by the inspecting team, whereas licence of all the four shops belonging to the petitioner has been cancelled by the authority. It is not disputed that as per Rule 4 of general licence conditions, licence for the group of four shops was granted to the petitioner. Rule 4 (i) of the general licence conditions lays down that "Groups of each of the three liquor shops, geographically neighbouring shall be formed by the licensing authority. Groupwise licences shall be issued under the rules". Rule 4 (ii) lays down that "Licensing authority shall be authorized to reduce any one shop or to add one/two shops in the group, with a view to augment of the revenue, but the shops shall not be of the same selling capacity." Under this scheme, the licence of four shops was granted to the petitioner including the shop in question, the inspection of which was conducted by the inspecting team. Rule 8 (b) of the general licence conditions

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however, lays down that shop-wise licence fee minimum month-wise guaranteed quantity, security amount, and annual quantity of each shall be separate. Section 31 of the Act lays down that the authority granting any licence, permit or pass under this Act may cancel or suspend it. Therefore, the submission made by the learned counsel for the petitioner is that the learned authority was not right in cancelling the licence of other three shops, because licence for four shops was granted to the petitioner's group and no irregularity was found in other three shops. Therefore, the licence for those shops should not have been cancelled.

19. The learned Additional Advocate General appearing on behalf of the State/respondents placed reliance on Sub-rule (4) of Rule 23 of the general licence conditions and argued that Sub-rule (4) prescribes that in case the licence is cancelled on the above mentioned grounds the licensee may also be blacklisted and debarred from holding any excise licence in future. As far as this provision is concerned, the licence has not been cancelled under Rule 23 of the general licence conditions. Therefore, Sub-rule (4) is not applicable in the present case. Licence has been cancelled under Sub-section (b) (1) of Section 31 of the Act. Since separate licence has been granted for other three shops and no inspection was conducted by the inspecting team of those shops, I am of the opinion that the learned Collector was not within his right in cancelling the licence of those other three shops.

20. In view of the above, I am of the opinion that the matter must be sent back to the Collector to record his finding on all the points raised by the petitioner after giving opportunity to the Department as well as to the petitioner.

21. In the result, the order of the learned Collector dated 30th July, 2003 is quashed. As far as cancelling the licence of foreign liquor shop of the petitioner situated at Urla (Abhanpur) is concerned, the matter is being

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sent back to the Collector with a direction to pass the order afresh after giving opportunity to the petitioner and the Department in the light of the observations made hereinabove. As far as the question of other three shops is concerned, the licence of those three shops stands restored and the Collector is directed to allow the petitioner to run those three shops. The order of the Collector dated 31st July, 2003 putting the petitioner's shop into auction is also quashed.

22. The writ petition stands disposed of.

Sd/-
L.C.BHADOO
Judge

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